

57
February, 25. 1726.

Unto the Right Honourable,

The Lords of Council and Session,

T H E

P E T I T I O N

O F

THOMAS CRAWFORD of *Crivoch*, Do-
ctor of Medicine ; and *Answers to the Petition*
for the Society for propogating Christian Know-
ledge,

Humbly sheweth,

IN a Competition between several of the Earl of *Sutherland* and Lord *Strathnaver's* Creditors, about some Equivalent-Debentures; my Lord *Pancailana* Ordinary, on the 23d Instant, preferred several of *Strathnaver's* Creditors, to whom I conceive my self preferable; and superseded my Claim until *June*. I am a Creditor to the Earl of *Sutherland* by Bond, and have arrested these Debentures in the Clerk's Hands.

Your Lordships will please know, That these Debentures are the Produce of publick Debts owing to the Earl of *Sutherland*, one Half of which was only alledged to be assigned to the Lord *Strathnaver*; so that one Half of these Debentures belongs to the Earl of *Sutherland*, and consequently, I who am a Creditor of my Lord *Sutherland's*, having arrested the same, must have them made furthcoming to me. And the Answer is insufficient, That these Debentures are in my Lord *Strathnaver's* Name: For that was done by the clandestine Management of *Alexander Ross*, Agent for the late Lord *Strathnaver*, in the Year 1718, who borrowed up from the Clerks, the Certificates of what was owing by the Publick to the Earl of *Sutherland*, and got Debentures struck in *Strathnaver's*, in stead of *Sutherland's* Name; so that now, *Sutherland's* Certificates were turned into *Strathnaver's* Debentures. But a Complaint of this was immediately tabled before the Lords; and the Lord *Strathnaver* and his Doer, were compelled to return *Strathnaver's* Debentures, struck upon *Sutherland's* Certificates; yea, and to find Caution for L. 359 *sterl.* of Money received upon these Certificates out of the Equivalent. So that these Debentures are no more my Lord *Strathnaver's* than the Certificates were, that is, only the Half of them: So that I fall to be preferred upon one Half of them. Beside, *non constat* in this Process that any of them belong to *Strathnaver*; for his Right to them is not produced here.

I pled before the Ordinary my Preference also upon the other Half, and humbly insist upon it, for this Reason, That the Laird of *Grant*, who
was

was a Creditor of the Earl of Sutherland's, stands preferred by the Lords upon these Debentures for the Sum of L. 18447 Scots: He, for 10000 Merks paid to him by the Earl of Sutherland, which Sir William Gordon advanced, by giving his Bond for the same, conveys his whole Rights, and particularly this Decree of Preference on the Debentures, to the said Sir William, (*Vide* Pag 11th of his Disposition to Sir William) with Advice of the said Earl. This Assignment is only for Sir William's own behoof, in so far as the Sum advanced in the Earl's Name goes, and for which he is preferred: But as Grant's whole Right stands in his Person, he is Trustee as to the rest for my Lord Sutherland; and consequently, that Remainder is affected by my Arrestment. It was answered to this, That Sir William was Trustee for my Lord Strathnaver, who is not my Debitor. But it was replied for me, That there is not the least Vestige of the Trust's being for Strathnaver, in the Assignment to Sir William; on the contrar, in the said Assignment to Sir William, in the End of Pag. 8, and in Pag. 9, Grant owns the Receipt of the Money from the Earl of Sutherland; and in the same 9th Pag. Sir William pays, in Name, and at the Desire of the Earl. And it is only with Consent of the Earl, that Grant conveys to Sir William; which makes it as clear as Sun-shine, that Sir William is Trustee for the Earl, and for none else. The Earl pays, and by his Consent (in effect) he assigns and disposes to Sir William: What clearer Documents of Trust is it possible to have? Besides, if Sir William, after the Society for propagating Christian Knowledge, &c. are paid, draw all which the Laird of Grant could have drawn, as no doubt he will, who can oblige him to compt and denude? Not Strathnaver surely; but Sutherland, and he only, in whose Name he paid, and by whose Consent he got Grant's Right. It was urged, That Sutherland was Curator for Strathnaver: But supposing that (which does not appear,) here it is plain, from what is above, he acted not *Tutorio nomine*, nor any way in Name of Strathnaver. And we have no Ground to believe he had 10000 Merks of Strathnaver's in his Hands; yea it is plain, he had not, for Sir William Gordon was obliged to become bound for it: So it is evident Sir William is Trustee for the Earl, and consequently, what he has so in Trust, must be liable to the Earl's Creditors, that is, the Society and me. For this Reason I did, and do consent to the Society's Preference; and both we must be ranked, as Grant would have been, whose Right stands in Trust for the Earl: And Strathnaver's Creditors will not be prejudged hereby; for there is more Fund than will pay us all. As to the Petition for taking up the Debentures. *non facio vni*, as to Sir William Gordon and the Society; but oppose it as to the rest, for the Reasons foresaid.

MeAT it therefore please your Lordships, To prefer me next after Sir William Gordon and the Society, and before all my Lord Strathnaver's Creditors.

According to Justice, &c.

MICH. MENZIES.